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| APPLICATION NO.   | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO.        | CONFIRMATION NO.       |
|---|-------------|----------------------|----------------------------|------------------------|
| 10/821,853  | 04/12/2004  | Setsuo Misaizu       | 1614.1397                  | 1747                   |
| 21171   | 7590        | 09/11/2007           |                            |                        |
| STAAS & HALSEY LLP<br>SUITE 700<br>1201 NEW YORK AVENUE, N.W.<br>WASHINGTON, DC 20005 |             |                      | EXAMINER<br>CURS, NATHAN M |                        |
|   |             |                      | ART UNIT<br>2613           | PAPER NUMBER           |
|   |             |                      | MAIL DATE<br>09/11/2007    | DELIVERY MODE<br>PAPER |

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

# Office Action Summary

Application No.

10/821,853

Applicant(s)

MISAIZU ET AL.

Examiner

Nathan Curs

Art Unit

2613

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

## Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

- 1) ☒ Responsive to communication(s) filed on 12 June 2007.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

## Disposition of Claims

- 4) ☒ Claim(s) 1-12 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 1 is/are allowed.
- 6) ☒ Claim(s) 2-6 and 8-12 is/are rejected.
- 7) ☒ Claim(s) 7 is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 12 April 2004 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

## Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some \* c) ☐ None of:
1. ☒ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

## Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_.
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_.
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: \_\_\_\_\_.

## DETAILED ACTION

### *Claim Objections*

1. Claim 7 is objected to because of the following informalities: In line 8, "as a minimal value" should be "between a minimal value".

Appropriate correction is required.

### *Claim Rejections - 35 USC § 112*

2. The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

3. Claims 2, 3, 5, 6, 8, 9, 11 and 12 are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention.

Claims 2, 5, 8 and 11 recite the limitation "the first average and the second average are substantially equal to  $0.25(\text{Min} + \text{Max})$  and  $0.75(\text{Min} + \text{Max})$ ". These equations represent new matter. The specification on page 15, lines 26-34 supports the "first average" substantially equal to  $(\text{Min} + 0.25(\text{Max} - \text{Min}))$  but not substantially equal to  $0.25(\text{Min} + \text{Max})$ , and supports the "second average" substantially equal to  $(\text{Min} + 0.75(\text{Max} - \text{Min}))$  but not substantially equal to  $0.75(\text{Min} + \text{Max})$ .

Claims 3, 6, 9 and 12 recite the limitation "the optimal identification level is set between  $0.3(\text{Id1} + \text{Id2})$  and  $0.4(\text{Id1} + \text{Id2})$ ". These equations represent new matter. The specification on

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page 14, lines 9-16 supports the optimal identification level set to between  $(ld1 + 0.3(ld2 - ld1))$  and  $(ld1 + 0.4(ld2 - ld1))$  but not to between  $0.3(ld1 + ld2)$  and  $0.4(ld1 + ld2)$ .

4. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

5. Claims 4 and 10 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claims 4 and 10 recite the limitation of the "monitoring limiter amplifier *configured similarly to the limiter amplifier* and receiving the electric signal" [emphasis added]. The claims are indefinite because the scope of this limitation (the emphasized portion) is unclear. Prior to this recitation, the only limitation recited for the limiting amplifier is that of amplifying the electric signal that was converted from the optical signal. So the monitoring amplifier, if it's "receiving the electric signal" too, is then similar to the limiter amplifier, but what's recited is "configured similarly...*and* receiving the electric signal" [emphasis added] as if being configured similarly involves something more than just receiving the electric signal. Later in the claim the limiter amplifier is recited as receiving the optimal identification level. Is this what's further meant by "configured similarly" (that the monitoring amplifier also receives the optimal identification level)?

***Allowable Subject Matter***

6. Claims 1 is allowed.

7. Claim 7 is objected to as described above but would be allowable if the objection was overcome.

8. Claims 4 and 10 would be allowable if rewritten or amended to overcome the rejection(s) under 35 U.S.C. 112, 2nd paragraph, set forth in this Office action.

***Response to Arguments***

9. Applicant's arguments filed 12 June 2007 with respect to the 35 USC § 103 rejections based on Solheim have been fully considered and are persuasive in light of the amended claims. The rejections under 35 USC § 103 have been withdrawn.

10. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

**Conclusion**

11. Any inquiry concerning this communication from the examiner should be directed to N. Curs whose telephone number is (571) 272-3028. The examiner can normally be reached on M-F (from 9 AM to 5 PM).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Jason Chan, can be reached at (571) 272-3022. The fax phone number for the organization where this application or proceeding is assigned is (571) 273-8300. Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (800) 786-9199.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pairdirect.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

  
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